



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/479,240	01/07/00	KLEIN	M 1038-1000 MI

Sim & McBurney
Suite 701
330 University Avenue
Toronto ON M5G 1
CANADA

HM11/0323

EXAMINER
NAVARRO, A

ART UNIT	PAPER NUMBER
1645	

AIR MAIL

DATE MAILED: 03/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/479,240

Applicant(s)
Klein et al

Examiner
Mark Navarro

Group Art Unit
1645



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 59-76 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 59-76 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 59-74, drawn to hybrid genes comprising PIV-3--RSV G chimerics, classified in class 536, subclass 23.4.
 - II. Claims 59-74, drawn to hybrid genes comprising PIV-3--RSV F chimerics, classified in class 536, subclass 23.4.
 - III. Claims 59-74, drawn to hybrid genes comprising PIV-HN--RSV F chimerics, classified in class 536, subclass 23.4.
 - IV. Claims 59-74, drawn to hybrid genes comprising PIV-HN--RSV G chimerics, classified in class 536, subclass 23.4.
 - V. Claims 75-76, drawn to chimeric proteins comprising PIV-3--RSV-G, classified in class 530, subclass 350.
 - VI. Claims 75-76, drawn to chimeric proteins comprising PIV-3--RSV F, classified in class 530, subclass 350.
 - VII. Claims 75-76, drawn to chimeric proteins comprising PIV-HN--RSV F, classified in class 530, subclass 350.
 - VIII. Claims 75-76, drawn to chimeric proteins comprising PIV-HN--RSV G, classified in class 530, subclass 350.
2. The inventions are distinct, each from the other because of the following reasons:

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Inventions I-IV drawn to DNA molecules, and Invention V-VIII drawn to polypeptide molecules are distinct since they are products with different structure and biological properties. The protein is made of amino acids whereas the nucleic acid molecule consists of nucleotides. Further methods known in the art used to make the polypeptide require different reagents and parameters from the methods of making nucleic acid encoding the protein and the method of making the polypeptide does not require the nucleic acid. For instance, the protein can be made by Merrifield chemical synthesis or affinity chromatography. Furthermore, MPEP 803.04 recites that nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their separate classification and their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any

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amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Navarro whose telephone number is (703) 306-3225.



Mark Navarro

Primary Examiner

March 20, 2001